

Kallof
Aldrich

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

April 12, 1956
Opinion No. 56-83

REQUESTED BY: The Honorable Douglas Holsclaw
House of Representatives

OPINION BY: Robert Morrison, The Attorney General
Frederick E. Kallof, Special Assistant
Attorney General

QUESTION: May the Legislature enact into law a statute which differentiates, for assessment rate purposes, classes of real and personal property in relation to its full cash value?

CONCLUSION: Yes.

It has been held that:

"* * * The Legislature has the right to classify the objects of taxation, and 'if there is any reasonable ground for the classification * * * and the law operates equally upon all within the class, there is no violation of constitutional limitations, state or Federal, relating to class legislation or equal protection of the laws'. 51 Am. Jur. Section 169, page 225. This is the settled rule in Arizona." Duham v. State Tax Commission, 65 Ariz. 268. Citing additional authority.

"In absence of a constitutional prohibition, the legislature of the State may classify property for taxation. Our constitution not only does not prohibit classification, but, as a matter of fact, implies that this can and will be done." Section 1, Article 9 of the Constitution of Arizona. Powell v. Gleason, 50 Ariz. 542.

"The power of taxation shall never be surrendered, suspended, or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only." Article 9, Section 1, ACA, 1939.

"The only limitation on the power of our Legislature in that respect is that the classification must not be arbitrary, must be based upon some real and substantial difference in the classes and must not be in conflict with any of the provisions of the Constitution." Powell v. Gleason, supra. Citing additional authority.

"* * * So the legislature may arrange and divide the various subjects of taxation into distinct classes and impose different rates on the several classes, or tax one class to the exclusion of the others, without violating the requirement of equality and uniformity, and it may exercise wide discretion in selecting and classifying the subjects of taxation, provided the tax is uniform on all members of the same class, and provided the classification of the subjects of taxation is reasonable and provided the classification of the subjects of taxation, as has been held, is not arbitrary. Inequalities resulting from singling out particular class for taxation infringe no constitutional limitation, and the legislature, in making a classification for tax purposes, is not required to make meticulous adjustments in an effort to avoid incidental hardships. However, the legislature must treat alike all persons in similar circumstances, and refrain from clear and hostile discrimination against particular persons or classes; and a classification cannot be sustained which is arbitrary, invidious, or unreasonable. * * * It has also been held, however, that the difference between the classes need not be great or conspicuous, in order to sustain the classification, and that it is not necessary that the basis of the classification should be deducible from the nature of the thing classified, or that the classification depend on scientific or marked differences in the subjects classified. In other words, any substantial and reasonable basis of classification is allowable and a classification will be held valid if not palpably arbitrary. * * *" 84 C.J.S., Taxation, page 112 through 120.

The Supreme Court of the United States has also dealt with this problem. In Nashville, Chattanooga & St. Louis Ry. v. Browning, 310 U.S. at page 368, 60 S.Ct. at page 972, the Court said:

"That the states may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society make appropriate-- these are among the common places of taxation and of constitutional law. Kentucky Railroad Tax Cases, (Cincinnati, N.O. & T.P.R. Co. v. Com. of Kentucky) 115 U.S. 321, 6 S.Ct. 57, 29 L.Ed. 414; Pacific Express Co. v. Seibert,

142 U.S. 339, 12 S.Ct. 250, 35 L.Ed. 1035; Florida Central & P.R. Co. v. Reynolds, 183 U.S. 471, 22 S.Ct. 176, 46 L.Ed. 283; Southern Ry. Co. v. Watts, 260 U.S. 519, 43 S.Ct. 192, 67 L.Ed. 375; Atlantic Coast Line R. Co. v. Daughton, (Daughton) 262 U.S. 413, 43 S.Ct. 620, 67 L.Ed. 1051; (New York) Rapid Transit Corp. v. New York, 303 U.S. 573, 58 S.Ct. 721, 82 L.Ed. 1024."

"The power to classify, if it exists, includes the power to subclassify within reason. It is, it seems, 'as competent for the legislature to place different classes of railroads in different classes, for the purpose of taxation, as it is to place railroads in a class by themselves, and tax them and their property differently from other persons.'" Cooley Taxation, Vol. 1, Fourth Edition, Sec. 333, page 711.
84 C.J.S., Taxation, page 122.

The above principles of law appear to be applicable to the question on hand; however, they must be applied with caution. Most cases touching on this point pronounce principles such as above quoted, which are general in their nature, and, therefore, not always applicable to a specific set of facts concerning the classification of property; nor do they distinguish the applicability of the general principles stated above to the classification of real property alone or to personal property.

ROBERT MORRISON
The Attorney General

Frederick E. Kallof
FREDERICK E. KALLOF
Special Assistant
Attorney General

llm

56-83